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SUBJECT: SETTLEMENT OF ECOPETROL STRIKE HINGES ON
REINSTATEMENT OF DISMISSED UNION MEMBERS

Classified By: Ambassador William B. Wood for reasons 1.4 (b)
and (d).

Summary

1. (SBU) Twenty-two days into the Syndicated Workers Union's ("Union Sindical Obrero," or USO) strike against Ecopetrol -- Colombia's state-owned oil company -- the lone issue remaining on the negotiation table is whether Ecopetrol will re-hire nearly 180 workers dismissed for their participation in a strike previously declared illegal by the Ministry of Social Protection (MSP). The MSP decision was based on a 1995 Constitutional Court ruling that all hydrocarbon sector employees perform "essential public services" and are prohibited from striking. USO declared its "political strike" to protest the GOC's restructuring of Ecopetrol, claiming that the plan would result in the company's liquidation and hand control of Colombian oil fields to foreign firms. Both USO and Ecopetrol agree that most of their strictly labor-related disputes were resolved well before USO declared the strike. USO's failure to articulate or to achieve its objectives has severely weakened the union's public standing and its ability to keep workers from crossing the picket line. END SUMMARY.

Background

2. (U) The Syndicated Workers Union's ("Union Sindical Obrero," or USO) declared a "political strike" on April 22 to protest the GOC's restructuring of Ecopetrol, Colombia's state-owned oil company. USO representatives told us that the restructuring will result in the privatization of Ecopetrol and a loss of Colombian control over Colombian natural resources. On the same day, the Ministry of Social Protection (MSP) declared the strike illegal on the basis of a 1995 Constitutional Court ruling prohibiting hydrocarbon sector workers from striking on the grounds that they perform "essential public services." USO workers represent approximately one-half of Ecopetrol's 6,600 member work force. We recently met separately with USO's national human rights director Daniel Rico Serpa, former USO human rights director Jose Fernando Ramirez Lozano, Ecopetrol President Isaac Yanovich and Minister of Mines and Energy Luis Ernesto Mejia to discuss ongoing negotiations and to assess the possibility of reaching a settlement.

3. (SBU) Ecopetrol and USO entered into negotiations on a new labor contract under their collective bargaining agreement in November 2002. Under Colombian labor law, parties have 20 days to reach an agreement before submitting to mediation and, after an additional 20 days, binding arbitration. Colombian law requires each party to name an arbitrator. If the two named arbitrators are unable mutually to agree on a third arbitrator, the third arbitrator is selected by the MSP. In March 2003, the GOC imposed binding arbitration on both parties. In September 2003, after waiting six months for USO to name an arbitrator (USO refused to do so), the MSP named an arbitrator on USO's behalf. Mejia told us the arbitrator named was a lawyer sympathetic to the union's position with a long history of defending unions in labor disputes.

Labor Issues Resolved, "Political Strike" Declared

4. (SBU) USO representatives and Yanovich both told us that the parties were able to resolve key labor-related points of disagreement in the context of binding arbitration between September and December 2003. In January 2004, USO walked away from the negotiating table to protest the GOC's division of Ecopetrol into two entities, the original company and the National Hydrocarbons Agency (NHA), a regulatory agency for the hydrocarbon sector. USO leaders maintained that the restructuring would result in Ecopetrol's privatization and eventual liquidation and would effectively hand control of Colombia's oil fields to foreign firms.

15. (SBU) According to Mejia, the restructuring permits Ecopetrol to compete more transparently with foreign oil firms by ceding Ecopetrol's traditional authority to negotiate contracts with foreign oil firms on newly discovered oil fields to the NHA. Ecopetrol retains its financial autonomy, a government-appointed board of directors, and authority over all oil fields under Ecopetrol control as of December 31, 2003. The plan also permits Ecopetrol to sell stock without ceding GOC control of the company. In reaction to the GOC decree, which went into effect on January 1, 2004, USO publicly raised the possibility of a strike. According to USO's Daniel Rico Serpa, the "political strike" was an attempt to raise consciousness among Colombians and to protect Colombian natural resources from being exploited by foreign oil firms. When asked what concessions they hoped to achieve by striking, neither USO representative could provide an answer.

GOC Declares Strike Illegal

16. (U) According to Mejia and Yanovich, the MSP repeatedly informed USO that the strike would be declared illegal on the basis of the 1995 Constitutional Court ruling. The arbitrators referred the matter to the Supreme Court, which ruled that the union was not permitted to strike and should return to the negotiating table. On April 22, USO announced their intent to strike. On the same day, Minister of Social Protection Diego Palacios declared the strike illegal. USO maintains the GOC does not have the authority to declare the strike illegal, citing a 1999 Supreme Court ruling that the GOC may not intervene in labor disputes involving state-owned enterprises. Ecopetrol and the GOC hold that the ruling explicitly exempts enterprises whose workers provide essential public services. USO and other Colombian trade unions also cite earlier ILO rulings declaring that petroleum sector workers do not provide essential public services and therefore may strike.

Both Ecopetrol and USO Confident, Wary

17. (SBU) Ecopetrol and USO perceptions of union support and the prospects for USO's success differ tremendously. USO workers represent one-half of Ecopetrol's 6,600 member work force. USO maintains that 80 percent of union members are participating in the strike and that Ecopetrol's production has diminished precipitously as white-collar workers and untrained contractors have been tapped to fill in for striking workers. Yanovich told us that only 25 percent of Ecopetrol's work force is participating in the strike and that the company has been able to maintain its production levels using contractors hired from other firms under the company's contingency plan. Yanovich also maintains that Ecopetrol is slowly reincorporating workers who have crossed the picket line.

18. (SBU) USO contends that Ecopetrol is pressuring striking workers with the threat of being fired; that Ecopetrol installations in Barrancabermeja have been militarized; and that uniformed soldiers frequently deliver dismissal letters to workers' families. Ecopetrol states that a military presence is necessary to prevent vandalism and property damage and justifies the dismissal of nearly 180 workers, including USO President Gabriel Alvis and Vice President Hernando Hernandez, on the grounds that they had been informed that the strike was illegal. On earlier occasions, the ILO has criticized Colombian labor laws, which give the GOC permission to dismiss workers for participation in an illegal strike. USO leaders claim that striking workers have been threatened by paramilitaries and other armed actors, but have stopped short of alleging that paramilitaries are collaborating with Ecopetrol or the GOC.

Only One Issue to Resolve: Reinstatement

19. (SBU) Yanovich believes the company has convinced USO that the restructuring of Ecopetrol will not result in a loss of financial autonomy or production rights. After five negotiation sessions over the past six days, both sides agree that the only issue to be resolved is whether Ecopetrol will re-hire dismissed USO workers. Ecopetrol maintains that the workers were aware of the consequences of their actions when they decided to strike and refuses to offer them employment as direct hires. However, Ecopetrol has indicated a willingness to help dismissed workers find new employment, possibly with some of Ecopetrol's external contractors.

Comment

110. (C) For the first time in USO's history, a strike against Ecopetrol has not resulted in significant declines in production or concessions in favor of organized labor. The reasons behind USO's political strike were never clearly articulated to the public and even most USO leaders are unclear about the union's demands or objectives. USO's obstructionist approach to all phases of negotiations with Ecopetrol has damaged the union's public credibility and considerably weakened the union, traditionally a giant of Colombian labor.

WOOD